

1 Laurence F. Padway, #89314
Law Offices of Laurence F. Padway
2 1516 Oak Street, Suite 109
Alameda, California 94501
3 Telephone: (510)814-6100
Facsimile : (510)814-0650

4 Attorneys for plaintiff
5 Darrell Wiley

6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 DARRELL WILEY,

No.

10
11 Plaintiff,

**COMPLAINT FOR
BREACH OF INSURANCE
CONTRACT AND RELATED
CLAIMS**

12 vs.

13 UNUM LIFE INSURANCE COMPANY
OF AMERICA, and Does 1-30, inclusive,

14 Defendants.
15 _____/

16 Comes now the plaintiff, demanding a trial by jury, and alleging of defendants as
17 follows:
18

19 **JURISDICTION**

20 1. Diversity jurisdiction arises under 28 U.S.C. 1332.
21

22 **FACTUAL ALLEGATIONS RELATED TO JURISDICTION**
23

24 2. Darrell Wiley purchased a Disability Income Policy of insurance from defendant
25 Unum Life Insurance Company which became effective August 16, 1983. At that time Mr. Wiley
26 was a resident of this judicial district. Because of the disability alleged herein, Mr. Wiley was
27 compelled to relocate to Utah for financial reasons. He currently resides in Utah.
28

1 would appear to be its anniversary date.

2
3 **FIRST CLAIM FOR RELIEF - DECLARATORY RELIEF**
4

5 7. Plaintiff incorporates paragraphs 1-6 herein.

6
7 8. Mr. Wiley's disability originated with an accident, and he is entitled to a
8 declaration that he is entitled to the benefits payable for accidental injury.

9
10 Wherefore, Mr. Wiley prays for relief as set forth below.

11
12 **SECOND CLAIM FOR RELIEF - BREACH OF CONTRACT**
13

14 9. Plaintiff realleges paragraphs 1-6 herein.

15
16 10. Mr. Wiley has performed all things required of him under the contract.

17
18 11. Defendant Unum breached the contract by its determination that Mr. Wiley's
19 disability is the result of sickness as opposed to accident, and defendant repudiated the contract by
20 announcing on February 19, 2019 that it would stop payments when Mr. Wiley reaches age 65, as set
21 forth in paragraphs 5 and 6, supra.

22
23 15. Mr. Wiley is entitled to all of the monthly payments which come due April 3,
24 2020, and he is entitled to accelerate all payments due after that date. Average life expectancy for a
25 65 year old individual is approximately 18 years. The payments due over that 18 year period are
26 approximately \$324,000.

27
28 16. Mr. Wiley is dependent upon the disability insurance policy to make up part of

1 his income loss. Unum knew, at the time it issued the policy and all times thereafter, that Mr. Wiley
 2 relied upon Unum to replace some of his income in the event he was disabled, and that, if he had a
 3 valid claim under the policy, it would come at a time when he was particularly susceptible to stress
 4 and harm if Unum failed to pay the amount due. Mr. Wiley has in fact suffered the typical emotional
 5 distress associated with a failure of a disability insurer to pay benefits when due, and suffered
 6 consequential damages in an amount subject to proof at trial and estimated at \$300,000.

7
 8 Wherefore, plaintiff prays for relief as set forth below.

9
 10 **THIRD CLAIM FOR RELIEF - BAD FAITH**

11
 12 17. Plaintiff realleges paragraphs 1-16 as if they were set forth herein.

13
 14 18. The actions of Unum in denying the disability claim for the June, 2013 to January
 15 2015 time period was unreasonable, and in bad faith because:

16
 17 A. Unum failed to credit the reliable reports of treating physicians;

18
 19 B. Unum failed to take reasonable efforts to assure that the physicians which
 20 reviewed matters for Unum were fair and impartial, and used proper medical judgment;

21
 22 C. Unum's reasoning is that it is unable to determine the precise etiology of the loss.
 23 While it is the insured's burden to show disability, it is the insurer's burden of proof to show
 24 limitations and exclusions from coverage. Accordingly, if Unum is unable to determine the etiology
 25 of the loss, then the loss should be classified as the result of accident, not sickness.

26
 27 19. As a proximate result of the foregoing, Mr. Wiley has been damaged by the need
 28 to retain counsel for and prosecute this lawsuit, and he has been subject to the typical types of stress

1 which occur when disability insurers unreasonably deny claims. The reasonable value of the
2 attorneys' fees to prosecute this case are not now known with certainty but are estimated at
3 \$250,000.

4
5 20. The actions of defendant have been willful and oppressive, and done with the
6 knowledge that defendants were not acting in a reasonable fashion, and that the actions of defendant
7 was substantially certain to harm Mr. Wiley, so as to justify the imposition of punitive damages
8 according to proof or in the sum of \$1,000,000. The actions of defendant as alleged herein were the
9 result of systemic practices established and encouraged by management of Unum, and Unum has a
10 history of engaging in these and similar improper practices.

11
12 Wherefore, plaintiff prays for relief as set forth below.

13
14 **Prayer for Relief**

15
16 Wherefore, plaintiff prays for relief as follows:

17
18 1. For benefits due from April 3, 2020, until the death of the plaintiff, at the rate of
19 \$1500. per month, and acceleration of those payments in the total amount of approximately
20 \$324,000;

21
22 2. For general damages of \$300,000 or according to proof;

23
24 3. For punitive damages of \$1,000,000 or according to proof;

25
26 4. For attorneys fees for the costs of proving the claim for breach of contract in the
27 approximate sum of \$200,000. or according to proof;

1 5. For a declaration that Mr. Wiley's disability is due to accident.

2
3 6. For costs of suit herein; and

4
5 7. For such other relief as the Court deems just and proper.

6
7 Dated: May 21, 2019

8 /s/ Laurence F. Padway
9 Laurence F. Padway
Attorney for plaintiff

10
11 **DEMAND FOR JURY TRIAL**

12 Comes now plaintiff, Darrell Wiley, requesting trial by jury of all issues so triable.

13
14 Dated: May 21, 2019

15 /s/ Laurence F. Padway
16 Laurence F. Padway
Attorney for plaintiff
Darrell Wiley